

Buffalo Law Review

Volume 9 | Number 1

Article 79

10-1-1959

Criminal Law—Conviction for Sabbath Breaking Upheld

Buffalo Law Review

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Recommended Citation

Buffalo Law Review, *Criminal Law—Conviction for Sabbath Breaking Upheld*, 9 Buff. L. Rev. 138 (1959).
Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol9/iss1/79>

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*v. Lalli*⁸⁰ the Court of Appeals held that the possession of "dream books" and "tip-sheets," which policy game devotees resort to in their search for winning numbers, does not constitute possession of articles commonly used in promoting the policy game.

The statute is plainly broad in scope: it forbids the possession of any article used in carrying on, promoting or playing the game. However, the process of judicial construction has effectively limited its scope, so that it is now directed at only the activities of those persons directly involved in the game—operators, entrepreneurs, and players.⁸¹ Moreover, the articles possessed must be the actual tools required in the operation of the game.⁸² The Court in the present case, reversed the convictions because the sale of such guidebooks is only indirectly connected with the game, and because the guidebooks are not required to carry on the game.

The fact remains, however, that such guidebooks are sold only because the game exists, and such books encourage persons to play by aiding them in selecting winning numbers. Any activity which is intended to and does encourage the game promotes the very evil sought to be curbed.

CONVICTION FOR SABBATH BREAKING UPHOLD

Article 192 of the Penal Law contains a number of statutory offenses known as the Sabbath Laws, which are designed to protect the religious repose on Sundays.⁸³ The sections in this Article indicate in detail those acts which are prohibited on Sunday. Section 2147 prohibits the sale of any property on Sunday, with certain enumerated exceptions. The sale of gravestones and cemetery monuments is not within these exceptions. For this reason the Court of Appeals upheld a conviction for such a sale in *People v. Kupprat*.⁸⁴ The defendant argued that his acts did not actually disturb the repose and for that reason his conviction should not stand. Actual disturbance is not, however, the standard which the legislature has laid down for sabbath breaking.⁸⁵ Since the legislature has laid down in detail those acts prohibited, it is not the place of the courts to substitute a different and general standard.

A person . . . who shall have in his possession, knowingly, . . . any paper, print, writing, number, device, policy slip, or article of any kind such as is commonly used in carrying on, promoting or playing the game commonly called "policy," . . . or who aids, assists, or abets in any manner, in any of the offenses, acts or matters herein named, is a common gambler, and guilty of a misdemeanor.

80. 5 N.Y.2d 536, 186 N.Y.S.2d 262 (1959).

81. *People v. Hines*, 284 N.Y. 93, 29 N.E.2d 483 (1940); *People v. Wolosky*, 296 N.Y. 236, 72 N.E.2d 172 (1947); *People v. Engeman*, 129 App. Div. 462, 114 N.Y. Supp. 174 (2d Dep't 1908).

82. *People v. Adams*, 176 N.Y. 351, 68 N.E. 636, *aff'd* 192 U.S. 585 (1903).

83. N.Y. PEN. LAW §§ 2140-2154.

84. 6 N.Y.2d 88, 188 N.Y.S.2d 483 (1959), *reversing* 7 A.D.2d 739, 180 N.Y.S.2d 628 (2d Dep't 1958).

85. *People v. East Coast Attic & Basement Co.*, 4 N.Y.2d 954, 175 N.Y.S.2d 825 *affirming* 10 Misc. 2d 378, 174 N.Y.S.2d 789 (County Ct. 1958); *People v. Moses*, 140 N.Y. 214, 35 N.E. 499 (1893); *People v. Joyce*, 174 App. Div. 574, 161 N.Y. Supp. 771 (3d Dep't 1916).